

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
OLD LADDER LITIGATION CO., LLC, as  
Litigation Designee on behalf of the :  
Liquidation Trust :

Plaintiff,

-against-

INVESTCORP BANK B.S.C., INVESTCORP S.A.; :  
INVESTCORP INTERNATIONAL, INC.; :  
INVIFIN, S.A.; INVESTCORP INVESTMENT :  
EQUITY LIMITED; INVESTCORP HOLDINGS :  
LIMITED; INVESTCORP WERNER HOLDINGS :  
L.P.; STEPUP LIMITED (GENERAL PARTNER :  
OF INVESTCORP WERNER HOLDINGS :  
L.P.) OWNERSHIP HOLDINGS LIMITED; C.P. :  
HOLDINGS LIMITED; SIPCO LIMITED; :  
BALLET LIMITED; DENARY LIMITED; GLEAM :  
LIMITED; HIGHLANDS LIMITED; NOBLE :  
LIMITED; OUTRIGGER LIMITED; QUILL :  
LIMITED; RADIAL LIMITED; SHORELINE :  
LIMITED; ZINNIA LIMITED; CIP LIMITED; :  
STEP INVESTMENTS LIMITED; WL HOLDINGS :  
LIMITED; EQUITY WERA LIMITED; :  
CLIMBING PRODUCTS LIMITED; LADDER :  
EQUITY LIMITED; WERNER EQUITY :  
LIMITED; WERNER INVESTMENTS LIMITED; :  
WERNER IIP LIMITED; ANNISVILLE LIMITED; :  
COOPERSTOWN LIMITED; FRISCO LIMITED; :  
PLATEA LIMITED; CRAIG R. WERNER :  
FAMILY LIMITED PARTNERSHIP (CRAIG :  
WERNER - GENERAL PARTNER); ROBERT I. :  
WERNER - IRREV. TRUST DATED 8/30/94 :  
(RONALD WERNER ADMINISTRATIVE :  
TRUSTEE); RICHMOND DRIVE ENTERPRISES, :  
L.P. (RICHARD WERNER AND LOIS WERNER - :  
GENERAL PARTNERS); MICHAEL E. WERNER :  
REVOCABLE TRUST, U/A/D 1/2/96 (MICHAEL :  
WERNER - TRUSTEE); BRUCE D. WERNER - :  
TRUST (BRUCE WERNER - TRUSTEE); :  
ELIZABETH W. ACKERMAN TRUST DTD :  
12/18/67 (JEFFREY R. ACKERMAN, :  
SUCCESSOR TRUSTEE); ERIC J. WERNER;

Case No. 08-CV-0876

(ECF)

: **DECLARATION OF KAREN R.**  
: **GARCELL IN SUPPORT OF**  
: **DEFENDANTS' OPENING**  
: **MEMORANDUM OF LAW IN**  
: **SUPPORT OF DEFENDANTS'**  
: **JOINT MOTIONS TO TRANSFER**  
: **VENUE AND TO DISMISS THE**  
: **COMPLAINT**

ALLIGATOR PARTNERS, L.P. (HOWARD :  
 SOLOT AND JANET SOLOT - GENERAL :  
 PARTNERS); MICHAEL J. SOLOT; DONALD M. :  
 WERNER; RONALD E. WERNER; DENNIS G. :  
 HEINER; THE HEINER FAMILY TRUST :  
 (DENNIS HEINER AND MARGO HEINER - :  
 TRUSTEES); MINDY WERNER ALTER; ELISE :  
 W. FROST; FLORENCE J. WERNER - :  
 IRREV. TRUST DATED 10/7/94 (RONALD :  
 WERNER, MARC WERNER AND MICHAEL :  
 WERNER - TRUSTEES); GAIL RAUCH :  
 BLACKMAN; BRUCE D. WERNER FAMILY :  
 LIMITED PARTNERSHIP (BRUCE WERNER - :  
 MANAGING GENERAL PARTNER); IRA AND :  
 ELISE FROST FAMILY LIMITED :  
 PARTNERSHIP (ELISE FROST - GENERAL :  
 MANAGING PARTNER); RONI S. ROSATI; :  
 NOEL BERK-RAUCH; GERALD R. WHIPMAN; :  
 HOWARD L. SOLOT; ISABELLE N. WERNER; :  
 SOPHIA. K. WERNER; AGNES BONTE :  
 FRANCOIS; WERNER-ALTER, LLC (MINDY :  
 WERNER ALTER - MANAGER); JANET F. :  
 SOLOT; BEVERLY WERNER NEEDHAM; :  
 MARSHA BETH KARP; EDWARD A. :  
 POLLACK; EDWARD POLLACK, POA MLW; :  
 ROBERT I. WERNER; LAURA WERNER; :  
 LAURA W. WERNER REVOCABLE TRUST, :  
 U/A/D 1/2/96 (LAURA WERNER - TRUSTEE); :  
 RANKELL FAMILY TRUST (STEVEN :  
 RANKELL - TRUSTEE); STEVEN RANKELL; :  
 MARC L. WERNER; RICHMOND J. ROSATI; :  
 RYAN GREGORY ROSATI; ROSS DANIEL :  
 ROSATI; RAUCH TRUST (ALEENA :  
 SHAPIRO - TRUSTEE); PETER R. O'COIN; :  
 ELISSA SCHWARTZ; SUZANNE SCHWARTZ; :  
 JONATHAN C. WERNER GIFT TRUST U/A/D :  
 11/1/96 (JEFFREY WEISMAN - TRUSTEE); :  
 STEPHANIE N. WERNER GIFT TRUST :  
 U/A/D 11/1/96 (JEFFREY WEISMAN - :  
 TRUSTEE); VINCENT J. GARCELL :  
 LIVING TRUST (VINCENT J. GARCELL & :  
 KAREN R. GARCELL, TRUSTEES); BARBARA :  
 L. WERNER; ASHLEY ELIZABETH WERNER; :  
 JEFFREY ADDISON WERNER; WERNER GC :  
 TRUST FOR ERIN (BEVERLY WERNER :  
 NEEDHAM TRUSTEE); ERIN JOY RYAN; :  
 WERNER GC TRUST FOR SHANNON :  
 (BEVERLY WERNER NEEDHAM - TRUSTEE);

SHANNON ROSE RYAN; MICHAEL B. :  
 WERNER; ALLISON TYLER KARP; :  
 FLORENCE J. WERNER; MARGOT A. WERNER :  
 GIFT TRUST U/A/D 11/1/96 (LAURA WERNER - :  
 TRUSTEE); STEWART CHARITABLE :  
 REMAINDER UNITRUST (GARY STEWART - :  
 TRUSTEE); STEWART CHARITABLE :  
 REMAINDER UNITRUST (ILENE STEWART - :  
 TRUSTEE); ROBERT A. ROSATI; JEFFREY R. :  
 ACKERMAN; LEE L. BASILOTTA; MICHEL :  
 FRANCOIS; ELLEN BERK-RAUCH; :  
 MELANIE R. WERNER; HEATHER :  
 BLACKMAN; KAREN LYNN MOSESKA; :  
 BARBARA L. WERNER; ELI BERK-RAUCH; :  
 HANNA BERK-RAUCH; CLAIRE FRANCOIS; :  
 JAMES ANDRE FRANCOIS; TAMMY H. :  
 WERNER; DONALD B. ACHENBACH; :  
 DAVID A. CARDILLO; MELISSA S. KARP; J. :  
 DAVID GOLDBLATT; JUNE GOLDBLATT; :  
 CLAUDE J. FRANCOIS; PHILLIP F. TIDY; :  
 GARY L. STEWART; RICHARD D. BONTE; :  
 VERA BONTE; MARLANE T. KRANE; DEBRA :  
 A. ROTHMAN; MARGARET B. BONTE :  
 ANNE L. WERNER RESIDUARY TRUST :  
 (TIMOTHY F. BURKE - TRUSTEE); GARCELL :  
 1997 UNITRUST DTD 12/19/1997; MAURICE :  
 WEINER; ANNE L. WERNER RESIDUARY :  
 TRUST - EX (TIMOTHY F. BURKE - :  
 TRUSTEE); NOVAK PARTNERSHIP, AKA A :  
 CALIFORNIA LIMITED PARTNERSHIP (ALYCE :  
 NOVAK - TRUSTEE); ALYCE NOVAK; JOSHUA :  
 J. ROTHMAN; KEVIN MATTHEW ROTHMAN; :  
 PAULA J. GRIFFITH; HENRY W. DOWLER; :  
 VINCENT A. GENIS; MATTHEW W. WEISS; :  
 STEVEN R. BENTSON; WILLIAM J. RIPPIN; :  
 DAVID C. MCGOWAN; BRAD J. GELLIS; :  
 MICHAEL E. TRZYNKA; LARRY V. FRIEND; :  
 EDWARD W. GERICKE; JOHN J. :  
 FIUMEFREDDO; MICHAEL D. BROOKS; :  
 JORDANA ROTHMAN; LINDA C. JOUBERT; :  
 ERIC A. MASON; JASON S. KRANE; BRUCE :  
 B. FISHER; WILLIAM C. HAZLETT; NEAL R. :  
 MARTIN; DENNIS J. JOHNSON; JEREMY M. :  
 KAPLAN; RACHAEL A. KAPLAN; BETH KATZ; :  
 SUSAN MORROW; DAVID M. CONN; MARC L. :  
 WERNER - IRREVOCABLE TRUST 1 (RICHARD :  
 WERNER AND DONNA S. WERNER - :  
 TRUSTEES); THE ESTATE OF MAX HANFLING :

(EDWARD A. POLLACK - EXECUTOR); :  
 HERMAN H. LISS; KARRAH KAPLAN; :  
 DEBORAH ANN KAPLAN TRUST U/D 14 :  
 JANUARY 1998 (JEREMY M. KAPLAN - :  
 TRUSTEE); JUDITH LILY KAPLAN TRUST U/D :  
 14 JANUARY 1998 (JEREMY M. KAPLAN - :  
 TRUSTEE); JULIA E. KAPLAN; NEIL D. :  
 KAPLAN; ROBERT H. PINNEY; JESSICA Z. :  
 JOUBERT; MICHAEL D. WISE; SARA P. :  
 GRAHAM; CARLY KRANE; RICHARD M. :  
 KELLY; SHIRLEY W. RAUCH TRUST :  
 (SHIRLEY RAUCH, STANLEY RAUCH, AND :  
 MARLANE KRONE - TRUSTEES); FRANCESCA :  
 GIANOGLIO BONTE; ALESSANDRA BONTE; :  
 KELLY SINON; SUZANNE ROSEN; DEBORAH :  
 KAPLAN; JUDITH KAPLAN; VINCENT J. :  
 GARCELL; SYLVIA S. KAPLAN; BETH :  
 MORROW; ILENE STEWART; STANLEY S. :  
 RAUCH TRUST; BRUCE D. WERNER; CRAIG R. :  
 WERNER TRUST; ELIZABETH WERNER :  
 TRUST, N.C.B.; LOIS S. WERNER REVOCABLE :  
 TRUST; RICHARD L. WERNER REVOCABLE :  
 TRUST; DOROTHY M. WHIPMAN; CRAIG :  
 WERNER; DANA SNYDER; JAMES BAKER; :  
 PETER NOLAN; CHRISTOPHER STADLER; :  
 THOMAS SULLIVAN; MICHAEL WONG; :  
 JAMES HARDYMON; JAMES EGAN; CHARLES :  
 MARQUIS; MAMOUN ASKARI; STEPHEN :  
 TEMPINI; STEVEN RICHMAN; DONALD :  
 RESNICK; TIMOTHY LEWIS; CHRISTOPHER :  
 FILARDI; JOHN REMMERS; KEVIN WALZ; :  
 JOHN J. DYLIK; WENDY A. MEIKLE; LISA A. :  
 PRESSLER; DOUGLAS BATES; GEORGE :  
 KOERNER; JOHN THIGPEN; LEONARD GREEN :  
 & PARTNERS, L.P.; LGP MANAGEMENT INC.; :  
 GREEN EQUITY INVESTORS III, L.P.; :  
 WERNER CO-INVESTMENT LLC; MURRAY :

DEVINE & CO., INC.; LOUGHLIN MEGHJI & :  
 CO., INC.; AND DOES 1 THROUGH 300, :  
 INCLUSIVE, :

Defendants. :

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**DECLARATION OF KAREN R. GARCELL**

I, Karen R. Garcell, Declare as follows:

1. I am over the age of majority, am mentally competent, suffer from no legal disability, and make this Declaration based upon my personal knowledge.

2. I give this Declaration in support of Defendants' Opening Memorandum of Law in Support of Defendants' Joint Motions to Transfer Venue and to Dismiss the Complaint. I give this Declaration voluntarily and I testify that the matters set forth herein are true.

3. I do not reside in the State of New York, and I do not own, use or possess any real property situated within the State of New York.

4. I was born and raised in the State of Virginia. Thereafter I moved to Georgia, and then to California, where I currently reside.


5. I have no connection to the state of New York, and have only entered the state twice in my life. In 1976, I accompanied my husband on a two-day trip to see his mother, and in approximately 1983, after attending my husband's mother's funeral in New Jersey, my husband got us lost on the freeway and we somehow wound up in New York. After realizing where we were, we quickly turned around and returned to New Jersey.

6. I have no other connections to the state of New York.

7. I am a co-trustee of the Vincent J. Garcell Living Trust and a co-trustee of the Garcell 1997 Unitrust DTD 12/19/1997. Neither of these trusts has any contacts with the State of New York, and neither trust contains any property situated within the State of New York. All of the trust property, trustees, and beneficiaries of these trusts are located outside of the State of New York, and have no relation to the State of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1<sup>st</sup> day of June, 2008, in Irvine, California.

  
Karen R. Garcell

AFFIDAVIT OF SERVICE

STATE OF NEW YORK     )  
  : ss.:  
COUNTY OF NEW YORK    )

Kenneth J. Horrmann, being duly sworn, deposes and says:

1. I am not a party to the action, am over 18 years of age and am employed by  
Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036.

2. On June 2, 2008, I served the following:

- *Notice of Motion,*
- *Opening Memorandum of Law in Support of Defendants' Joint Motions to Transfer Venue and to Dismiss the Complaint,*
- *Declaration of Michael D. Brooks,*
- *Declaration of Anthony W. Clark,*
- *Declaration of David M. Conn,*
- *Declaration of Daniel M. DiDomenico,*
- *Declaration of John J. Dylik,*
- *Declaration of Christopher G. Filardi,*
- *Declaration of Bruce B. Fischer,*
- *Declaration of Karen R. Garcell,*
- *Declaration of Vincent J. Garcell,*
- *Declaration of Edward W. Gericke,*
- *Declaration of Timothy K. Lewis,*
- *Declaration of Neal R. Martin,*
- *Declaration of Lisa A. Pressler,*
- *Declaration of John M. Remmers,*
- *Affidavit of Steven P. Richman,*
- *Declaration of Christopher J. Stadler,*
- *Declaration of Gary Stewart,*
- *Declaration of Thomas J. Sullivan,*
- *Declaration of Gregory W. Werkheiser,*
- *Declaration of Eric J. Werner; and*
- *Declaration of Michael S. Wong*

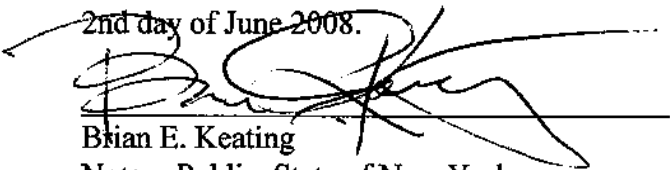
by first-class mail by depositing same in a post-paid properly addressed envelope, in an official  
depository under the exclusive care and custody of the U.S. Postal Service within the State of  
New York upon:

Kevin C. Walz  
8045 Bainbrook Drive  
Chagrin Falls, OG 44023

David A. Cardillo  
23 St. Glory Road  
Greenville, PA 16125

Kenneth J. Horrmann  
Kenneth J. Horrmann

Sworn to before me this  
2nd day of June 2008.

  
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Brian E. Keating  
Notary Public, State of New York  
No. 01KE5009535  
Qualified in Westchester County  
Certificate Filed in New York County  
Commission Expires March 15, 2011